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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment securities LLC,

Plaintiff,

v.

MERRILL LYNCH BANK (SUISSE) S.A.

Defendant.

SIPA Liquidation  
No. 08-01789-SMB  
(Substantively Consolidated)

Adv. Pro. No. 11-02910 (SMB)

**MERRILL LYNCH BANK (SUISSE) S.A.'S COUNTER-DESIGNATION  
OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Merrill Lynch Bank (Suisse) S.A., by and through its undersigned counsel, respectfully  
submits, pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Rule 8009-1

of the Local Bankruptcy Rules for the Southern District of New York, its counter-designation of items to be included in the record on appeal with respect to the appeal by Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated estate of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. § 78aaa, et seq., and Bernard L. Madoff, individually, in the above captioned adversary proceeding (the “Adversary Proceeding”), of the Stipulated Final Order Granting Motion to Dismiss Complaint (the “Final Judgment”) before the United States Court of Appeals for the Second Circuit.

**COUNTER-DESIGNATION OF ITEMS TO BE  
INCLUDED IN THE RECORD ON APPEAL<sup>1</sup>**

1. All items designated or to be designated by any other appellant, cross-appellant, appellee, or cross-appellee to any of the appeals or cross-appeals from the Final Judgment, including, without limitation, the items designated in the Trustee’s Statement of Issues to be Presented and Designation of Items to be Included in the Record on Appeal (ECF No. 96).<sup>2</sup>

2. The Certification of Direct Appeal to Court of Appeals (ECF No. 98); and

3. The April 8, 2016 Letter on Behalf of the Subsequent Transferee Defendants in Response to Mr. Sheehan’s April 7, 2016 Letter (*Secs. Inv. Protection Corp. v. Bernard L. Madoff Inv. Secs., LLC*, Adv. Pro. No. 08-01789 (SMB), ECF No. 13070).

**RESERVATION OF RIGHTS**

Merrill Lynch Bank (Suisse) S.A. expressly reserves the right to supplement the record on appeal or cross-appeal and to adopt the designation of any items designated or counter-

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<sup>1</sup> Items designated include all exhibits and submissions attached thereto and, as to hearing transcripts, any and all documents admitted into evidence.

<sup>2</sup> Unless otherwise stated, citations to (ECF No. \_\_) refer to docket entries in Adversary Proceeding No. 11-02910-SMB.

designated by any other appellant, cross-appellant, appellee, or cross-appellee to any of the appeals or cross-appeals from the Final Judgment.

Dated: New York, New York  
April 11, 2017

Respectfully submitted,

By: /s/ Pamela A. Miller  
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